

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

AMY B. SPAHN,
Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner
of Social Security,
Defendant.

No. C07-1015

ORDER ON JUDICIAL REVIEW

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I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 1) filed by Plaintiff Amy B. Spahn on June 28, 2007, requesting judicial review of the Social Security Commissioner's decision to deny her application for Title II disability insurance benefits. Spahn asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits. In the alternative, Spahn requests the Court to remand this matter for further proceedings.

II. PRIOR PROCEEDINGS

Spahn applied for disability insurance benefits on April 1, 2003. In her application, Spahn alleged an inability to work since January 29, 2003 due to third degree osteoarthritis and depression. Spahn's application was denied on May 28, 2003. On September 15, 2003, her application for disability insurance benefits was denied on reconsideration. On November 16, 2003, Spahn requested an administrative hearing before an Administrative Law Judge ("ALJ"). On September 28, 2004, Spahn appeared with counsel before ALJ Michael B. Kennett for an evidentiary hearing. Spahn and vocational expert Carma Mitchell testified at the hearing. In a decision dated July 5, 2005, the ALJ denied Spahn's claim. The ALJ determined that Spahn was not disabled and was not entitled to disability insurance benefits because she was functionally capable of performing her past relevant work as a data entry worker as it is ordinarily performed in the national economy. Spahn appealed the ALJ's decision. On May 2, 2007, the Appeals Council denied Spahn's request for review. Consequently, the ALJ's July 5, 2005 decision was adopted as the Commissioner's final decision.

On June 28, 2007, Spahn filed this action for judicial review. The Commissioner filed an answer on October 2, 2007. On November 3, 2007, Spahn filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that she is not disabled and that she can perform her past relevant work as a data entry worker. On December 20, 2007, the Commissioner filed a responsive brief arguing the ALJ's decision

was correct and asking the Court to affirm the ALJ's decision. On September 18, 2007, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

III. PRINCIPLES OF REVIEW

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination following an administrative hearing not to award disability insurance benefits is subject to judicial review. 42 U.S.C. § 405(g). 42 U.S.C. § 405(g) provides the Court with the power to: "[E]nter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner . . . with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). "The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive . . ." *Id.*

The Court must consider "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005) (citing *Harris v. Barnhart*, 356 F.3d 926, 928 (8th Cir. 2004)). Evidence is "substantial evidence" if a reasonable person would find it adequate to support the ALJ's determination. *Id.* (citing *Sultan v. Barnhart*, 368 F.3d 857, 862 (8th Cir. 2004)). Furthermore, "[s]ubstantial evidence is 'something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions does not prevent an administrative agency's findings from being supported by substantial evidence.'" *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (quoting *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989), in turn quoting *Consolo v. Fed. Mar. Comm'n*, 282 U.S. 607, 620 (1966)).

In determining whether the ALJ's decision meets this standard, the Court considers "all of the evidence that was before the ALJ, but it [does] not re-weigh the evidence." *Vester*, 416 F.3d at 889 (citing *Guilliams v. Barnhart*, 393 F.3d 798, 801 (8th Cir. 2005)). The Court not only considers the evidence which supports the ALJ's decision, but also the evidence that detracts from his or her decision. *Guilliams*, 393 F.3d at 801. "[E]ven if inconsistent conclusions may be drawn from the evidence, the agency's decision will be

upheld if it is supported by substantial evidence on the record as a whole.” *Id.* (citing *Chamberlain v. Shalala*, 47 F.3d 1489, 1493 (8th Cir. 1995)).

IV. FACTS

A. Administrative Hearing Testimony

1. Spahn’s Testimony

Spahn was born in 1958. She is a high school graduate. The record reflects that Spahn was employed by National Dentex, Inc. from 1986 until 2002. The record also shows that Spahn worked for Nordstrom Distribution Management in 2002.

At the September 28, 2004 hearing, Spahn testified that she stopped working in January, 2003, because she could no longer stand on her feet. According to Spahn, being on her feet caused intense pain in her knees, especially her left knee. She further testified that the pain in her knees increased after she stopped working in 2003. Spahn uses a cane to help her walk. She testified that she uses the cane in her left hand because she has carpal tunnel in her right wrist. She wears a brace on her right hand and wrist when she needs to use her right hand. In addition to her knee problems, Spahn testified that she has difficulty remembering things. She stated: “I can’t seem to remember to do much anymore. I wrote myself notes but I forget where I put my notes.”¹ The ALJ asked Spahn why she was prescribed Wellbutrin. She replied:

Well they thought maybe I was having trouble dealing with my situation at the beginning because I have always been a real active person and I’ve always been a real on top of things kind of person and it just kind of turned my whole world upside down with this pain and the fact that I can’t be physically mobile like I always have been. It’s changed my whole life and my husband’s and my daughter’s [lives], I feel real bad about that, you know.

(Administrative Record at 226)

¹ See Administrative Record at 225.

The ALJ asked Spahn to describe her typical day. Spahn informed the ALJ:

Well I usually get up between 6:30 and 7:00 and I get my daughter up for school and I make some coffee, then I go and sit down and just kind of direct her on getting ready for school and making sure she gets something for breakfast, I sit and watch until she gets on the bus and then normally I'll just sit and watch the news for awhile, I may throw a load of laundry in, I'll get myself dressed and then I usually sit down about every half hour to an hour so I can put my feet up and stretch out. It's usually -- it's the only comfortable position I can find to be in, laying down or sitting on the couch with my legs out in front of me.

(Administrative Record at 227) Spahn testified that she does not cook very often. She stated that her husband usually brings something home for dinner after he has finished working for the day. The ALJ also asked who cleans her house. Spahn replied:

We all do, my husband and my daughter on weekends, myself during the week, I'll pick up as I walk by here and there. If I'm having a good day, I change the beds. Everything I do is at my own pace. I can make sandwiches or something like that but if I have to stand in the kitchen and do a lot of cooking, I can't do it. I just -- I mean I'll force myself to do things but usually I'm in pain for awhile.

(Administrative Record at 228)

The ALJ and Spahn had the following colloquy regarding her physical limitations:

- Q: Now let me ask you some physical questions, now with respect to time on your feet, on an average day how long can you stay on your feet at one stretch of time? Walking, standing, whatever you would want to do?
- A: I have gone to the grocery store and as long as I can push a cart and lean on the cart, I can go for like 35 minutes to an hour.
- Q: Now you said that your knees bother you when you're on your feet?
- A: Yeah.
- Q: If you can't lean on anything, use anything for support, how long do you think you can stay on your feet? You mentioned about leaning on the grocery cart but if you can't lean on something or use something for support

- using your cane, how long do you think you can be on your feet?
- A: Maybe a half an hour. Honestly, I don't -- I'm not on my feet without something to lean on, a counter, a cane or -- I was leaning on something it seems.
- Q: With respect to sitting, on an average day if you're allowed to shift around in the chair, how long can you usually stay seated before you have to get up? Now this is not with your feet elevated, this would be with your feet either on the floor or raise[d] no higher than about six inches on a small stool. How long can you stay seated usually?
- A: Well if I go for an hour, I have to take some kind of pain killer either my Motrin or -- I have another one, its called I think Neoprene or something like that. . . .
- Q: And when you sit, is it your knees that bother you or what's the problem?
- A: Yeah -- well the knees, just being down in that position, bent down like that is painful just in itself.
- Q: And then on an average day with respect to lifting, using both hands, how much weight do you think you can lift?
- A: Maybe five to ten pounds comfortably, anything greater than that falls back on my knees and -- I'll push something out of the way but to actually lift, I probably wouldn't go over fifteen, twenty pounds tops.
- Q: Have you noticed any problems caused by your Carpel Tunnel in your right wrist?
- A: I've had that for quite a long time, I get -- it goes numb on me all the time. Usually when I'm leaning on it or if I'm sleeping at night it always wakes me up. If I raise it over my head or writing I can't write for more than five minutes and I have to stop and shake it out and let it come back to life.
- Q: Other than writing, what other problems have you noticed with the right hand?
- A: Lifting causes a lot of pain in my wrist because of it. Turning it certain ways, just leaning on it.
- Q: Do you drop things with the right hand or are you nervous?
- A: I've been known to not have a real good grip anymore, I used to have a real strong grip.

(Administrative Record at 229-31)

2. Vocational Expert's Testimony

At the hearing, the ALJ asked the vocational expert what work skills and exertional levels Spahn's past relevant work required. The vocational expert answered that Spahn's past work as an office clerk was light and semi-skilled work, and her job as a "data entry type clerk" was sedentary and semi-skilled. The ALJ directed the following question to Spahn:

Q: What problems which you have now . . . [would effect your ability] to do a data entry job?

A: Efficiency I think, I think my efficiency might be below average.

Q: Because?

A: Because I seem to be so distracted that I don't know if anything that I would be working on a certain amount of time, I could remain concentrate on.

Q: Because of the pain in your knees or what would cause you to be distracted?

A: It's the pain in my knees, it's like a constant discomfort that, it never leaves you, it's just always there.

(Administrative Record at 236) The ALJ asked the vocational expert whether there were any jobs in significant numbers in the national economy that would allow an individual to sit or lay back with their feet elevated, using a laptop on their stomach. The vocational expert replied:

Not typically, I had the experience where I had people be able to elevate one foot or prop it up on a waste can or an open file draw[er] or a wastebasket, things of that nature but when you get to putting both, elevating like up to waist level or higher or leaning back then the person who is in the position to be able to efficiently use -- generally if they have a moveable keyboard or a laptop. Generally it's not to the extent where they're not efficient enough to compete tasks required by the employer. One foot could be elevated but not both at a time.

(Administrative Record 238)

B. Spahn's Medical History

On December 5, 2002, Spahn visited Dr. Steven Rock, M.D., complaining of left knee pain. Spahn informed Dr. Rock that she was on her feet at work for significant amounts of time, and at the end of the day, her knee pain was "fairly severe." Spahn noted that the pain was constant, including throbbing pain at night. Spahn had no swelling, bruising, increased redness, increased warmth, or deformity over her knee. She also had full range of motion of the knee. Upon examination, Dr. Rock found:

No patellar crepitus was noted. She had no joint swelling or effusion. She had no joint line tenderness. She was tender along the course of the pes anserinus of the left knee. Her pain was mildly reproduced with resisted hamstring contraction with the tibia internally rotated primarily. She had no focal bony tenderness about the knee. Patellar compression test was negative. She had no laxity or pain with varus or valgus stress applied to either knee. She had full range of motion of both knees. She had no pain with overpressure to the right and left knee. McMurray's was negative. Lachman was negative. Anterior and posterior drawer were negative. Straight leg raise was intact. Neurovascular exam of the lower extremities was normal.

(Administrative Record at 182) X-rays of Spahn's knee showed mild degenerative joint changes in the medial compartment. Dr. Rock further noted that the x-ray showed no loose bodies within the joints or any other acute or chronic bony changes in her knee. Dr. Rock diagnosed Spahn with left knee pes anserine bursitis/tendonitis and mild degenerative joint disease of the knees. Dr. Rock recommended physical therapy as treatment.

On January 8, 2003, Spahn returned to Dr. Rock for follow-up on her complaint of left knee pain. Spahn informed Dr. Rock that her knee pain did not improve with physical therapy. Spahn had no locking, catching, giving way, or swelling of her knee. Upon examination, Dr. Rock noted pain along the left medial joint line; however, Spahn had full range of motion and no pain with full flexion of the left knee with overpressure. Dr. Rock determined that "[g]iven the amount of change at present on her x-ray, it would

be unlikely for this amount of pain to be represent[ative] of DJD [(degenerative joint disease)] alone.”² Dr. Rock ordered an MRI of Spahn’s knee to evaluate the possibility that she had a medial meniscal tear in her left knee. Dr. Rock also gave her a knee brace and prescribed 1000 mg of Tylenol per day as treatment.

Spahn was given the results of her MRI on January 14, 2003. The MRI showed some mild degenerative changes in the medial meniscus, but there was no definite tear. Dr. Rock encouraged Spahn to continue physical therapy at home and referred her to a surgeon to discuss further options for alleviating her knee pain.

On January 31, 2003, Spahn was examined by Dr. Scott P. Schemmel, M.D. Dr. Schemmel found no discernible intraarticular knee effusions. Dr. Schemmel determined, however, that Spahn had “marked medial joint line pain to direction palpation as well as hyperflexion.”³ Dr. Schemmel also noted that Spahn had lateral joint line pain, but was “ligamentously” stable throughout. Dr. Schemmel and Spahn discussed various options for further determining the cause of her knee pain and treating it, including arthroscopic surgery and long-term care for arthritic knees. After discussing her various options with Dr. Schemmel, Spahn decided to have an arthroscopy on her knee to determine whether she had a meniscus tear.

On February 10, 2003, Spahn underwent a left knee arthroscopic chondroplasty of the patella. The arthroscopy revealed that Spahn did not have a medial meniscus tear. Dr. Schemmel noted, however, that the undersurface of the patella showed a grade three articular surface lesion.

On February 21, 2003, Spahn met with Dr. Schemmel for follow-up on her arthroscopic surgery. Dr. Schemmel found that Spahn’s knee was recovering nicely. Dr. Schemmel noted that Spahn’s knee had trace effusion and full extension. Dr. Schemmel had Spahn continue physical therapy. Dr. Schemmel further noted:

² See Administrative Record at 180-81.

³ See Administrative Record at 178.

[Spahn] is going to remain off of work for at least a couple weeks more time and a work release was faxed to her imploring this regard.

[Spahn] understands, as I noted, the nature of her problem and the fact that she could have residual pain in this knee with deep knee flexion, squatting, kneeling, etc. Hopefully she will do well but time will tell.

(Administrative Record at 171)

On March 14, 2003, Spahn had another follow-up visit with Dr. Schemmel regarding her arthroscopic knee surgery. Dr. Schemmel found that Spahn was doing well. During her visit, Spahn informed Dr. Schemmel that she was walking with a normal gait, but after a couple of hours of walking, she was quite sore. Upon examination of Spahn's left knee, Dr. Schemmel found "absolutely" no knee effusion, full range of motion, and no retropatellar crepitation. Dr. Schemmel also noted that Spahn had a new complaint of "some" right knee pain. Upon examining Spahn's right knee, Dr. Schemmel found no knee effusion, full range of motion, and some medial joint line pain to direct palpation. Dr. Schemmel told Spahn to continue her physical therapy exercises and give the right knee additional time. Dr. Schemmel indicated that if her right knee continued to cause her pain in a couple of months, she could make an appointment to see him again. Dr. Schemmel concluded:

From my standpoint [Spahn] can return to her work as her comfort allows. She does not feel that she is comfortable enough to do so. She is considering changing occupations or applying for Social Security Disability.

(Administrative Record at 170)

On May 19, 2003, Dr. Dennis A. Weis, M.D., reviewed Spahn's medical records for Disability Determination Services ("DDS") and provided DDS with a residual functional capacity ("RFC") assessment. Dr. Weis determined that Spahn could: (1) occasionally lift and/or carry 50 pounds, (2) frequently carry and/or lift 25 pounds, (3) stand and/or walk with normal breaks for a total of about six hours in an eight-hour

workday, (4) sit with normal breaks for a total of about six hours in an eight-hour workday, and (5) push and/or pull without limitations. Dr. Weis also determined that Spahn could frequently balance, stoop, kneel, and crouch. Dr. Weis found, however, that Spahn could only occasionally climb and crawl. Dr. Weis further found no manipulative, visual, communicative, or environmental limitations. Dr. Weis summarized his finding as follows:

[Spahn] states that she can't stand, walk or sit for prolonged periods of time[,] i.e.[,] greater than one-half to two hours without having pain. Review of her pain/fatigue ADL's find her complaining of pain in her left knee, aggravated by movement and experienced daily. . . . She states she has some difficulty sleeping, no difficulty using her arms or hands and does not indicate problems lifting and carrying. She states her capacity to stand and walk varies. She remains capable of full self-care needs, regularly does laundry, vacuums, sweeps, does dishes, changes sheets with reminders, some garden work with reminders, drives a car, shops and runs a number of errands.

Review of the record finds that [Spahn] has been seen and evaluated for her knee complaints. X-rays reveal only mild degenerative changes as does MRI. Examinations reveal no swelling or effusion and she has some crepitus on range of motion and is felt have mild degenerative arthritis of her knee. . . .

[Spahn's] allegations are to an extent consistent with evidence contained in the file. . . . Continued improvement in range of motion and function and symptoms of pain would be anticipated with time and therapy due to the extent that she should be capable of the RFC as outlined [within 12 months.]

(Administrative Record at 152) On August 28, 2003, after reviewing Spahn's medical records, Dr. J.D. Wilson, M.D., affirmed Dr. Weis' RFC assessment as written.

On June 11, 2003, Spahn saw Dr. J.A. Mazzanti, D.P.M., complaining of right heel pain. Spahn informed Dr. Mazzanti that she had had pain in her right heel for about three months. Spahn indicated that the pain was most severe when she got up after sitting

for awhile. Upon examination, Dr. Mazzanti noted that Spahn had good muscle strength and good range of motion of all her joints. Dr. Mazzanti found that Spahn was tender to palpation over the “medial tubercle area on the plantar aspect of the right foot.”⁴ Based on x-rays of Spahn’s right foot, Dr. Mazzanti diagnosed her with pain due to plantar fasciitis and heel spur. Dr. Mazzanti gave Spahn stretching exercises and told her to use ice packs on her heel as treatment.

On August 4, 2003, Spahn met with Dr. Terrance Norton, M.D., for a psychiatric assessment. Prior to meeting with Dr. Norton, Nurse Kristy Lenz (“Lenz”) went over a psychiatric history form with Spahn. Spahn informed Lenz that her chief complaint was depression. Spahn noted that she cries easily. Lenz found Spahn’s mood to be down. Spahn indicated that she felt helpless and hopeless because she was unable to do any of the activities she enjoys, such as gardening, flea marketing, and metal detecting. Spahn also indicated that she had anxiety due to her knee pain and limited mobility. After providing her psychiatric history to Lenz, Spahn met with Dr. Norton. Dr. Norton found Spahn’s mood to be sad. Dr. Norton also found Spahn’s motor activity to be appropriate, memory intact, insight normal, and judgment normal. Dr. Norton diagnosed Spahn with depressive disorder. Dr. Norton treated Spahn with Wellbutrin.

On September 11, 2003, Dr. John C. Garfield, Ph.D., reviewed Spahn’s medical records and provided DDS with the psychiatric review technique form. Dr. Garfield found that Spahn suffered from depression, but did not think her impairment was severe. Dr. Garfield determined that Spahn had a mild degree of limitation with regard to restriction of activities of daily living, difficulties in maintaining social functioning, and difficulties in maintaining concentration, persistence, or pace. Dr. Garfield concluded:

Evidence shows that at her previous employment at Nordstrom’s Midwest Distribution Center she was regarded as exhibiting good to excellent work related functions. [Spahn’s activities of daily living] do not appear to be significantly impacted by depressive symptoms, but rather, by her arthritic

⁴ See Administrative Record at 168.

condition. . . . Evidence indicates that this is a non-severe impairment. . . .

(Administrative Record at 160)

On October 20, 2003, Spahn saw Dr. Judson W. Ott, M.D., complaining of bilateral anterior knee pain. Dr. Ott noted that Spahn lacked any mechanical symptoms, but had the most pain when she went up and down stairs and when she stood for a prolonged period of time. Upon examination, Dr. Ott found no effusion on her left knee, but found mild medial joint-line tenderness and some retropatellar crepitation. Dr. Ott informed Spahn that she had a form of arthritis in her knees that was difficult to resolve. Dr. Ott and Spahn discussed various options for treating her knee pain. Spahn decided to begin treatment with Bextra, an anti-inflammatory medication. Dr. Ott scheduled a follow-up to determine whether Spahn needed or wanted to try other treatments beyond medication. The record reflects that Spahn met with Dr. Ott on at least two occasions in 2004 for follow-up on her knee pain. On both occasions, Spahn decided to continue with medication as her treatment option.

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Spahn is not disabled. In making this determination, the ALJ was required to complete the five-step sequential test provided in the social security regulations. *See* 20 C.F.R. § 404.1520(a)-(f); *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); *Page v. Astrue*, 484 F.3d 1040, 1042 (8th Cir. 2007); *Anderson v. Barnhart*, 344 F.3d 809, 812 (8th Cir. 2003). The five steps an ALJ must consider are:

(1) whether the claimant is gainfully employed, (2) whether the claimant has a severe impairment, (3) whether the impairment meets the criteria of any Social Security Income listings, (4) whether the impairment prevents the claimant from performing past relevant work, and (5) whether the impairment necessarily prevents the claimant from doing any other work.

Goff v. Barnhart, 421 F.3d 785, 790 (8th Cir. 2005) (citing *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)); *see also* 20 C.F.R. § 404.1520(a)-(f). “If a claimant fails to meet the criteria at any step in the evaluation of disability, the process ends and the claimant is determined to be not disabled.” *Eichelberger*, 390 F.3d at 590-91 (citing *Ramirez v. Barnhart*, 292 F.3d 576, 580 (8th Cir. 2002)).

“To establish a disability claim, the claimant bears the initial burden of proof to show that he [or she] is unable to perform his [or her] past relevant work.” *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995) (citing *Reed v. Sullivan*, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the residual functional capacity to perform a significant number of other jobs in the national economy that are consistent with claimant’s impairments and vocational factors such as age, education, and work experience. *Id.* The RFC is the most an individual can do despite the combined effect of all of his or her credible limitations. 20 C.F.R. § 416.945. “‘It is the ALJ’s responsibility to determine a claimant’s RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant’s own descriptions of his [or her] limitations.’” *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005) (quoting *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001)).

The ALJ applied the first step of the analysis and determined that Spahn had not engaged in substantial gainful activity since March 28, 2003.⁵ At the second step, the ALJ

⁵ The ALJ determined that Spahn worked past her alleged disability onset date of January 29, 2003. In his decision, the ALJ stated:

Notably, although [Spahn] alleges a disability onset date of January 29, 2003, the record reflects that [Spahn] worked through March 28, 2003. Within an August 8, 2003 Work Performance Assessment from [Spahn’s] last employer, Nordstrom’s Midwest Distribution Center, Human Resources Manager, Mauricio Castaneda, reports that [Spahn] worked from October 14, 2002 through March 28, 2003 as a processor. His statement is corroborated by [Spahn’s] Work

(continued...)

concluded, from the medical evidence, that Spahn had the following “severe” impairments “obesity and a bilateral knee impairment.” At the third step, the ALJ found that Spahn did not have “an impairment or combination of impairments, which meet or equal the severity of any impairment listed in [20 C.F.R. § 404,] Appendix 1 to Subpart P of Regulations No. 4 [(the Listing of Impairments)].” At the fourth step, the ALJ determined that “the overall record supports a finding that [Spahn’s] capacity to perform work-related activity is only limited by her inability to perform more than a sedentary level of exertion. [Spahn’s] past relevant work as a data entry worker, as it is ordinarily performed in the national economy, does not require her to perform activities inconsistent with these limitations.” Accordingly, the ALJ found that Spahn could perform her past relevant work and therefore she was not disabled.

B. Spahn’s Residual Functional Capacity

Spahn contends that the ALJ erred by failing to make a function-by-function assessment of her residual functional capacity (“RFC”). The Commissioner offers very little argument in response to Spahn’s contention. The Commissioner simply states:

The ALJ found that [Spahn] was unable to perform more than a sedentary level of exertion. In the body of his decision, the ALJ explained this meant ‘standing and/or walking no more than two hours and sitting no more than six hours in an eight hour work day’ and she had no additional limitations. [Spahn] does not explain why this does not sufficiently provide the required functional assessment.

(Commissioner’s Brief at 6)

⁵(...continued)

History Report at Exhibit 3E/1, which also indicates significant work activity for this employer through March 2003. Given these statements and absent persuasive evidence to the contrary, the Administrative Law Judge finds that [Spahn] engaged in substantial gainful work activity through March 28, 2003.

See Administrative Record at 15.

At step four of the five-step sequential test, “[b]efore determining whether [Spahn] was able to return to her past work, the ALJ was required to determine her RFC.” *Roberson v. Astrue*, 481 F.3d 1020, 1023 (8th Cir. 2007) (citing 20 C.F.R. § 404.1520(e)). A claimant’s RFC is the most he or she can do despite his or her physical and mental limitations. *Depover v. Barnhart*, 349 F.3d 563, 565 (8th Cir. 2003); *see also* 20 C.F.R. § 404.1545(a) (the RFC is “the most [a claimant] can still do despite [his or her] limitations.”). More specifically, the RFC “‘is a function-by-function assessment based upon all the relevant evidence of an individual’s ability to do work-related activities,’ despite his or her physical or mental limitations.” *Roberson*, 481 F.3d at 1023 (quoting S.S.R. 96-8p, 1996 WL 374184 at *3 (Social Security Administration July 2, 1996)). Relevant evidence for determining a claimant’s RFC includes “‘medical records, observations of treating physicians and others, and an individual’s own description of his [or her] limitations.’” *Lacroix v. Barnhart*, 465 F.3d 881, 887 (8th Cir. 2006) (quoting *Strongson v. Barnhart*, 361 F.3d 1066, 1070 (8th Cir. 2004)). In the context of determining whether an individual is capable of returning to his or her past relevant work, the ALJ must specifically set forth the individual’s limitations and determine how those limitations affect his or her RFC. *Lowe v. Apfel*, 226 F.3d 969, 972 (8th Cir. 2000) (citing *Ingram v. Chater*, 107 F.3d 598, 604 (8th Cir. 1997)). Specifically, the ALJ is required to make “‘explicit findings’ regarding the physical and mental demands of [the individual’s] past work, and to compare those demands with [his or] her residual functional capacity to determine whether [he or] she could perform the relevant duties.” *Id.* (quotation omitted); *see also Pfitzner v. Apfel*, 169 F.3d 566, 568 (8th Cir. 1999) (“‘An ALJ’s decision that a claimant can return to his past work must be based on more than conclusory statements. The ALJ must specifically set forth the claimant’s limitations, both physical and mental, and determine how those limitations affect the claimant’s residual functional capacity.’” *Groeper v. Sullivan*, 932 F.2d 1234, 1238-39 (8th Cir. 1991).”); *Sells v. Shalala*, 48 F.3d 1044, 1046 (8th Cir. 1995) (holding that conclusory determinations that an individual can perform past work without specific findings as to the

physical and mental demands of his or her past work and how those demands affect the individual's ability to perform that work, does not constitute substantial evidence that he or she is able to return to his or her past work).

In his decision, the ALJ offers no explicit discussion of Spahn's RFC. Furthermore, the ALJ fails to provide a function-by-function assessment of Spahn's RFC. The ALJ summarily provided that:

[T]he overall record supports a finding that [Spahn's] capacity to perform work-related activity is only limited by her inability to perform more than a sedentary level of exertion. [Spahn's] past relevant work as a data entry worker, as it is ordinarily performed in the national economy, does not require her to perform activities inconsistent with these limitations. . . .

The documentary medical evidence shows no significant findings or evidence of limitations, which would bar [Spahn] from performing sedentary exertion. . . .

Although there is little objective medical evidence to support debilitating walking and standing limitations, the Administrative Law Judge finds that [Spahn's] bilateral knee pain complaints would reasonably limit [her] to sedentary work activity (i.e. standing and/or walking no more than two hours and sitting no more than six hours in an eight hour work day).

(Administrative Record at 15-17)

Contrary to the Commissioner's argument, the Court does not find that the ALJ "sufficiently provide[d] the required functional assessment." In *Pfizner*, the Eighth Circuit Court of Appeals remanded the claimant's case back to the ALJ because the ALJ "failed to make the required specific findings as to Pfizner's residual functional capacity and past work demands." *Pfizner*, 169 F.3d at 569. Similar to *Pfizner*, the Court finds that this matter should be remanded because the ALJ failed to make any specific findings with regard to Spahn's RFC.

Specifically, the ALJ failed to make a function-by-function assessment of Spahn's physical and mental limitations. The parenthetical in the ALJ's decision, "(i.e. standing

and/or walking no more than two hours and sitting no more than six hours in an eight hour work day),” is not a specific finding as to Spahn; instead, it is a general statement which supports the ALJ’s general conclusion that “[a]lthough there is little objective medical evidence to support debilitating walking and standing limitations, the Administrative Law Judge finds that [Spahn’s] bilateral knee pain complaints would reasonably limit [her] to sedentary work activity.” The ALJ does not explain how or why he reached the conclusion that based on the medical evidence, Spahn should be limited to sedentary activity. Furthermore, the ALJ ignored and did not discuss evidence in the record where Spahn and her husband state that (1) she cannot sit for extended periods of time without severe pain in her knees, (2) her doctors told her to avoid sitting with her knees bent, and (3) she can only sit with her knees bent for 1.5 to 2 hours at a time.⁶ See *Lacroix*, 465 F.3d at 887 (in determining a claimant’s RFC, the ALJ should consider the claimant’s medical records, observations of treating physicians and others, and an individual’s own description of his or her limitations). Moreover, the ALJ’s decision also lacks any discussion of Dr. Garfield’s findings from the “psychiatric review technique” form he provided to DDS. Dr. Garfield found that Spahn had a mild degree of limitation in maintaining concentration, persistence, and/or pace, and how these findings relate to Spahn’s ability to perform her past relevant work. Based on the foregoing, the Court finds that this matter should be remanded because the ALJ failed to make the required “‘explicit findings’ regarding the physical and mental demands of [the individual’s] past work, and to compare those demands with [his or] her residual functional capacity to determine whether [he or] she could perform the relevant duties.” *Lowe*, 226 F.3d at 972 (quotation omitted). On remand, the ALJ shall provide a function-by-function assessment of Spahn’s physical and mental limitations, make explicit findings as to the physical demands of Spahn’s previous work as a data entry worker, and compare those demands with her RFC,

⁶ See Administrative Record at 59, 64, 68, 76, 86, 101, 105.

and consider the entire record in determining her RFC, including her own description of her limitations. *See Lacroix*, 465 F.3d at 887.

C. The ALJ's Credibility Determination

Spahn argues that the ALJ failed to properly evaluate her subjective allegations of pain, functional limitations, and total disability in accordance with *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984). The record reflects that the ALJ's credibility determination consists of the following:

In accordance with Social Security Ruling 96-7p⁷, the undersigned Administrative Law Judge has considered [Spahn's] pain and 'excess' symptomatology, that which is not supported by the objective evidence, and does not find it credible to the extent that [Spahn] is precluded from performing sedentary activity. Although [Spahn] alleges that she suffers debilitating bilateral knee pain, the record fails to reflect significant clinical findings or objective medical evidence of limitations consistent with her complaints.

⁷ Under S.S.R. 96-7p, when making a credibility determination, an ALJ must: consider in addition to objective medical evidence . . . :

1. The individual's daily activities;
2. The location, duration, frequency, and intensity of the individual's pain and other symptoms;
3. Factors that precipitate and aggravate the symptoms;
4. The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;
5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;
6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms . . . ; and
7. Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

See S.S.R. 96-7p, 1996 WL 374186 at * 3 (Social Security Administration, July 2, 1996).

(Administrative Record at 17)

When evaluating the credibility of a claimant's subjective complaints, the ALJ may not disregard them "solely because the objective medical evidence does not fully support them." *Polaski*, 739 F.2d at 1322. However, the absence of objective medical evidence to support a claimant's subjective complaints is a relevant factor for an ALJ to consider. *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citation omitted). "The [ALJ] must give full consideration to all the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as: (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; [and] (5) functional restrictions." *Polaski*, 739 F.2d at 1322. Subjective complaints may be discounted if inconsistencies exist in the evidence as a whole. *Pelkey v. Barnhart*, 433 F.3d 575, 578 (8th Cir. 2006) (citing *Polaski*, 739 F.2d at 1322). However, the ALJ must give reasons for discrediting the claimant. *Id.* (citing *Strongson*, 361 F.3d at 1072). Where an ALJ seriously considers, but for good reason explicitly discredits a claimant's subjective complaints, the Court will not disturb the ALJ's credibility determination. *Johnson v. Apfel*, 240 F.3d 1145, 1148 (8th Cir. 2001) (citing *Pena v. Chater*, 76 F.3d 906, 908 (8th Cir. 1996)); *see also Williams*, 393 F.3d at 801 (explaining that deference to an ALJ's credibility determination is warranted if the determination is supported by good reasons and substantial evidence). The ALJ is not required, however, to discuss "methodically each *Polaski* consideration, so long as he acknowledged and examined those considerations before discounting [Spahn's] subjective complaints." *Lowe*, 226 F.3d at 972.

In his decision, the ALJ did not consider *Polaski*, nor did he make an explicit credibility determination. The ALJ made an implicit credibility determination, however, and asserted that it was in accordance with S.S.R. 96-7p, which incorporates some of the *Polaski* factors. The ALJ's determination, based on S.S.R. 96-7p, however, is nothing more than a conclusory statement which relies only on objective medical evidence to

suggest that Spahn is not credible. The Court finds that the ALJ's credibility analysis is insufficient. *See Polaski*, 739 F.2d at 1322 (an ALJ may not disregard the subjective complaints of a claimant "solely because the objective medical evidence does not fully support them."); *Pelkey*, 433 F.3d at 578 (an ALJ must give reasons for discrediting the claimant). Accordingly, the Court finds that remand is appropriate. On remand, the ALJ shall consider Spahn's credibility in accordance with *Polaski*, consider all the *Polaski* factors, and provide clear reasons for his credibility determination. *See Lowe*, 226 F.3d at 972 (an ALJ must acknowledge and examine the *Polaski* considerations before discounting the subjective complaints of a claimant).

D. Spahn's Disability Onset Date

Spahn disputes the ALJ's finding that she engaged in substantial gainful activity until March 28, 2003. Spahn maintains that her disability onset date is January 29, 2003. Spahn contends that the medical evidence in the record supports a disability onset of January 29, 2003. Relying on a "Work Performance Assessment" from Spahn's former employer, the ALJ concluded that her disability onset date was March 28, 2003. In *Karlix v. Barnhart*, 457 F.3d 742 (8th Cir. 2006), the Eighth Circuit Court of Appeals explained:

In determining the date of onset of a disability, the ALJ should consider the claimant's alleged date of onset, his [or her] work history, and the medical and other evidence of his [or her] condition. *Grebenick v. Chater*, 121 F.3d 1193, 1200 (8th Cir. 1997); Social Security Ruling 83-20 (Social Security Administration 1983). 'The date alleged by the individual should be used if it is consistent with all the evidence available.' Social Security Ruling 83-20. If the medical evidence regarding onset is ambiguous, however, the ALJ should obtain an expert opinion from a medical advisor to determine a medically reasonable date of onset. *See Grebenick*, 121 F.3d at 1200-01; *see also* Social Security Ruling 83-20.

Id. at 747. The Court finds that the evidence in the record is ambiguous as to Spahn's disability onset date. Therefore, on remand, the ALJ shall obtain an expert opinion from a medical advisor to determine Spahn's medically reasonable disability onset date. *See Id.*

E. Reversal or Remand

The scope of review of the Commissioner's final decision is set forth in 42 U.S.C. § 405(g) which provides in pertinent part:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g). The Eighth Circuit Court of Appeals has stated that:

Where the total record is overwhelmingly in support of a finding of disability and the claimant has demonstrated his [or her] disability by medical evidence on the record as a whole, we find no need to remand.

Gavin v. Heckler, 811 F.2d 1195, 1201 (8th Cir. 1987); *see also Beeler v. Brown*, 833 F.2d 124, 127 (8th Cir. 1987) (finding reversal of denial of benefits was proper where “the total record overwhelmingly supports a finding of disability”); *Stephens v. Sec’y of Health, Educ., & Welfare*, 603 F.2d 36, 42 (8th Cir. 1979) (explaining that reversal of denial of benefits is justified where no substantial evidence exists to support a finding that the claimant is not disabled). In the present case, the Court concludes that the medical records as a whole do not “overwhelmingly support a finding of disability.” *Beeler*, 833 F.2d at 127. Instead, the ALJ failed to properly explain Spahn’s RFC and properly apply the *Polaski* factors in determining Spahn’s credibility as to her subjective allegations of pain, functional limitations, and total disability. Accordingly, the Court finds that remand is appropriate.

VI. CONCLUSION

The Court concludes that this matter should be remanded to the Commissioner for further proceedings. On remand, the ALJ should provide a function-by-function assessment of Spahn’s physical and mental limitations, make explicit findings as to the physical demands of Spahn’s previous work and compare those demands with her RFC, and consider the entire record in determining her RFC, including her own description of her limitations. The ALJ should also properly apply the *Polaski* factors when determining

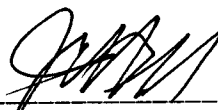
Spahn's credibility with regard to her subjective complaints of pain, functional limitations, and total disability. Additionally, the ALJ shall obtain an expert opinion from a medical advisor to determine Spahn's medically reasonable disability onset date.

VII. ORDER

For the foregoing reasons, it is hereby **ORDERED**:

This matter is **REVERSED** and **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings as discussed herein.

DATED this 17th day of March, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA